ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

PROVISIONAL LIST OF PARTICIPANTS IN THE MEETING OF THE SUB-COMMITTEE OF THE WHOLE ON THE LAW OF THE SEA AT NEW DELHI

2ND TO 6TH FEBRUARY 1976

MEMBER GOVERNMENTS

ARAB REPUBLIC OF EGYPT	:
BANGLADESH	: Mr. M. Kamaluddin,
GHANA	: H.E. Mr.W.W.K.Vanderpuye,
INDIA	: H.E. Dr. S.P. Jagota, Mr. Vinay Verma, Commodore F.L.Fraser, Mr. P.R. Rajgopal, Dr. P. Sreenivasa Rao, Mrs. R. Lakshmanan, Mr. I.C. Jain, Mr. Bhimsen Rao,
INDONESIA	: H.E. Mr. Suffri Yusuf, Mr. Sumbaryono, Mr. Adie Sumardiman, Mr. Indra Damanik, Mr. Remy Siahaan, Mr.
IRAN	: Mr. Hadi Sadeghi, Mr. H. Shah Panahi,
IRAQ	: H.E. Dr. Ismail Abdul Hameed Mirza, Dr. Akram Al-Witri, Mr. Mahmood Al-Hamed Dr. Mohammad Alhaj Hamood

JAPAN	: Mr. Tokio Iguchi, Mr. A. Sugino,
REPUBLIC OF KOREA	: Mr. Won Ho Lee, Mr. Yoon Kyung Oh,
KUWAIT	: Mr. Ali Al-Samaak, Mr. Hamad A.Al-Ahmad,
MAURITIUS	: Mr. Anil Kumar Gayan,
MALAYSIA	: Hon'ble Tan Sri Mohd.Salleh bin Abas, Mr. L.C. Vohrah, Mr. Zakaria bin Mohd. Yatim,
NEPAL	: H.E. Mr. C.R.S. Mallah Mr. Mr. J.P. Rana,
NIGERIA	: Mr. M.O. Adio,
PAKISTAN	: Mr. Raza Khan,
SRI LANKA	: Mr.P.H.Kurukulasuriya, Mr. W.P.A.B.Wickramasinghe,
TANZANIA	: Mr. S.A. Mbenna,
THAILAND	: H.E. Dr. Arun Panupong,
TURKEY	: H.E. Mr. Namik Yolga, Mr. Selim Kuneralp,

OMAN	: H.E. Mr. Zaher El-Kindy, Mr. Mahmoud Suleman Mohammed,

NON MEMBER GOVERNMENTS

AFGHANISTAN	: Mr. Hafizullah Anwar,
BHUTAN	: Mr. Angkoo Tshering,
BURMA	: Mr. U Soe Myint,
CYPRUS	: Hon'ble Mr. J. Jacovides,
ETHIOPIA	: Mr.
MONGOLIA	: Mr. Shagdarsurenguin Lhashid,
MOROCCO	:
SENEGAL	: Mr. Cherif Younouss Diaite,
SOMALI DEMOCRATIC REPUBLIC	:
UNITED ARAB EMIRATES	: Mr. Ahmed Husain Al-Nehri,

WORKING GROUP OF THE GROUP OF 77 ON MATTERS OF THE FIRST COMMITTEE

Meeting of January 1976

R E P O R T

The Working Group of the Group of 77 on First Committee matters met in New York from 19 to 31 January 1976 under the Chairmanship of Mr. Alvaro de Soto (Peru). At the first meeting the Chairman said that the purpose of the deliberations of the Working Group was to determine its position with respect to the Informal Single Negotiating Text which had been submitted by the Chairman of the First Committee during the third session of the Conference held at Geneva. He suggested that the Group should concentrate on the articles referring to the most important items, which in his view were the following:

(a) System of exploitation
(article 22 of Part I of the Informal Single Negotiating Text);
(b) Regulation of production
(articles 9, 28 and 30);
(c) Basic conditions
(set forth in Annex I of Part I); and
(d) Membership and procedure for adoption of decisions of the Assembly and the Council of the Authority
(Part I, articles 25 and 27).

The Group approved the method of work suggested by the Chairman and began immediately to consider the selected provisions. As a result of its deliberations, the Group proposed certain important changes in the text of articles 9 and 30 of Part I and paragraph 3 of the Annex, suggested the incorporation of a new sub-paragraph in article 28 of that Part and made observations on the other paragraphs of the Annex and on the articles of Part I of the Single Text relating to the membership and functions of the Assembly and the Council

of the Authority. The texts of articles 9 and 30 of Part I and of paragraph 3 of the Annex, with the amendments proposed by the Group, and the text of the proposed new subparagraph of article 28 of Part I are attached. There follow comments on the amendments to the aforementioned articles as well as a brief summary of the discussion concerning the remaining articles.

A) Comments on the proposed amendments

Article 9

It is proposed that the structure of this article should be changed by the elimination of the division of the article into two paragraphs. The introductory phrase, setting forth what the Group considers to be the fundamental principle by which activities in the Area should be guided, has been expanded with the addition of the words "to promote international co-operation for the over-all development of all countries, especially the developing countries". It is suggested that subparaphs (a) and (b) of paragraph 2 of the original article should be retained as they appear in the Single Text (subparagraphs (a) and (b) in the draft amendment), as also subparagraph (c) with minor changes (principle of equitable sharing in the benefits derived). Changes in the text of paragraph 1(b), which has become subparagraph (e), are proposed. Finally, it is proposed that two new principles which the Working Group considers to be of great importance should be introduced: the obtaining of just, stable and remunerative prices for the raw materials which originate both on land and in the Area, and the security of supply of such raw materials to consumers (subparagraph (d)), and the protection and preservation of the marine environment (subparagraph (f)).

The problem of the title of this article was left pending, since in the view of some members of the Group the present title does not seem appropriate.

Article 22

The Chairman indicated to the Group which, in his opinion, were the principal differences between the system of exploitation proposed by the Group of 77 (A/CONF.62/C.1/L.7) and that adopted in the Single Text (generic reference to "activities" in the Area, which are defined in article 1; express mention of States as entities through which the Authority may conduct activities in the Area). After an exchange of views, the Group concluded that the Single Text had in essence incorporated the solution which the Group of 77 had been advocating, and it was accordingly decided to propose the acceptance of the first two paragraphs of the article as formulated, on the understanding that, as stipulated in paragraph 7(b) of Annex I, States entering into contracts with the Authority cannot invoke sovereign immunities with respect to their contractual obligations. Also, attention is drawn to an error in the last line but one of paragraph 2, which should read "its direct", instead of "this direct". With respect to paragraphs 3 and 4 of this article, the Group understood that their prupose was to provide for modalities whereby activities could be undertaken in the Area without delay during the initial phases of the application of the regime. However, the Group agreed to suggest the deletion of paragraphs 3 and 4 of this article without taking a position either on its content or on the way in which a provision of this kind should appear in the event that an agreement was reached on the matter.

Article 28

The Group considered that the act of opening parts of the Area to exploration and exploitation was of enormous importance and that it was therefore desirable to indicate expressly in the Convention what organ of the Authority would possess the competence to do so, as also the fundamental conditions governing the exercise of such competence. The Working Group agreed to propose

the text of a new subparagraph to be added to article 28 (Powers and Functions of the Council), the text of which is attached hereto.

Article 30

The first paragraph of this article remains unchanged. Paragraph 3 would become paragraph 2 in the draft amendment, the last words ("from time to time") being deleted. As to paragraph 2 (paragraph 3 of the proposed amendment), it is proposed that it should be redrafted so as to refer specifically to "producer organizations, consumer organizations and the parties to commodity arrangements and/or buffer stock arrangements" as bodies advising the Economic Planning Commission.

Changes in paragraph 4 are also suggested so as to relate it to article 9(e) and to remove from it the subjective elements which appear in the original formulation and which could make its implementation more difficult.

Paragraph 3 of the Annex

The Group agreed to propose the restructuring of this paragraph by dividing it into two parts (3 and 3 bis in the accompanying draft amendment), in order to make a clearer separation between general survey operations and exploration and exploitation activities. The new paragraph 3 would set forth more clearly the nature of these general survey operations by specifying that they constitute activities undertaken prior to the exploration phase. It would be expressly stated that the Authority may carry out these operations and that such operations will in no case be of an exclusive character. Some delegations said that they were in favour of deleting the expression which appears in brackets; if that suggestion was approved, it would be clear that the carrying out of general survey operations does not require a prior act of opening of the parts

in question by the Council (in exercise of the competences conferred upon it by the proposed new subparagraph), although the conclusion of a contract with the Authority by the entity desiring to carry out such activities would still be necessary.

New paragraph 3 bis (formerly 3(b)) was reworded to make it clearer.

B) General remarks on other provisions

Annex, paragraphs 4-21

The Group accepted the Chairman's suggestion that it should make a general examination of these provisions in which such comments as were deemed to be most important would be made, without implying final acceptance of the texts. As a result of this examination and after many representatives had expressed their opinions, the following observations, which can be taken at this stage, as reflecting the consensus of the Group, were made:

Firstly, and as a general observation, it was proposed that throughout the text of the annex the word "evaluation" should be replaced by "exploration". It was agreed that evaluation is only one phase of exploration and that it was necessary to preserve the uniform terminology of Part I.

The Group agreed that in paragraph 4 all references to scientific research or general surveys should be deleted. There was also agreement that it would be more correct to refer to "other related activities" instead of enumerating them, as was done in the first part of the paragraph. Reference was made to the desirability of making in the Convention specific, but not exhaustive, reference to the various types of activities which might be considered as "related activities". One possibility mentioned was that of making such an enumeration in article 1 of Part I (definitions).

The following comments were made on paragraph 4(e)(ii):

Firstly, several representatives considered it essential to make a reference to commodity agreements. If that were done the first sentence of the provision in question, concerning prices lower than international market prices, would be unnecessary. It was also suggested that this subparagraph should cite article 9, paragraphs d and e, of the Convention.

Finally, reference was made to the need to state in this provision or elsewhere in the Convention that the Authority continued to have control over minerals extracted from the zone at least until such time as there was an international price for them or the products derived from them. A clause of that type might be included in the provisions concerning title to the minerals.

It was suggested that the words "fiscal and administrative" in paragraph 6(b) should be deleted, and it was proposed that the words "financial and economic" should be deleted from paragraph 7(b).

The Group agreed to propose that the following amendment should be made to article 8(a): to replace the words "may not refuse to enter into a contract" by "shall enter into a contract". The text of this provision seemed acceptable in principle provided it was understood that in that context "resource policy" included every component of the planning measures system related to the volume and type of minerals to be exploited, extension of the areas subject to exploitation, etc.

With regard to paragraph 8(e), it was pointed out that general surveys were not included.

With regard to paragraph 9(a), it was agreed to use the same terminology as was used in paragraph 5, so that the provision would read as follows:

"9(a): Any State Party, or State enterprise, or person natural or juridical which possesses the nationality of a State Party or is effectively controlled by it or its nationals and is sponsored by a State Party or any group of the foregoing which enters into a contract, joint venture or any other such form of association with the Authority pursuant to paragraph 5 for the conduct of activities relating to exploration and exploitation..."

The following amendments were suggested to sub-paragraph (b) of the same paragraph:

To replace the word "costs" by "expenditure".

To add at the end of the first sentence the words "covered by the said contract".

It was also established that it should be understood that the regulations on recovery arrangements would lay down a maximum percentage of funds for that purpose.

It is to be understood that the word "costs" in paragraph 9(c) includes the "investment costs" referred to in paragraph 9(b).

The Group agreed that paragraph 10 also applies to general survey contracts and that the Authority may accordingly include in such contracts a clause concerning the time intervals during which the other party must supply the necessary data.

The second sentence of paragraph 11 should begin as follows: "Subject to the provisions of articles 14, 15 and 16, the Contractor shall have security of tenure". It was also stated that it would be advisable to change the structure of the article in such a way as to divide it into two parts, the first on the granting of exclusive rights and the second on security of tenure for the Contractor.

A number of comments were made on the content of paragraph 12, a long paragraph having 22 sub-paragraphs in which possible subjects for regulation are listed. One member of the Group said, as a general observation on the paragraph as a whole, that it embodied a great many subjects of disparate importance, some of which did not seem to be susceptible to regulation.

The representatives of Indonesia and Zambia proposed a reformulation of the opening sentence of paragraph 12 which would read as follows:

"The Authority shall adopt and uniformly apply rules and regulations for the implementation of the principles and purposes of this Convention. These rules and regulations shall include:"

There would follow four general titles:

- Administrative procedures
- Operational procedures
- Financial matters
- Disputes

Under these titles there would be grouped the specific questions on which rules and regulations are to be adopted. These functions and their grouping under the general titles are to be submitted at the March meeting of the Group of 77.

The majority of the Group was in favour of advising that paragraph 14 should be amended to read:

"Suspension or termination"

"14. A Contractor's rights in the contract area shall be suspended or terminated only if the way in which the Contractor has conducted his activities constitutes a gross or persistent violation of the basic terms of the contract, of this Part ..."

The Group agreed to ask the representative of Zambia to prepare a draft of paragraph 15 on "Revision of Contracts".

Paragraph 16: It was agreed to add the expression "or fortuitous circumstances" after "force majeure".

Article 25 of Part I

After an exchange of views, the Group decided to advise acceptance of the system of membership of the Assembly and for the adoption of its decisions, as proposed in article 25, without prejudice to any necessary formal amendments and with the understanding that the Group favoured annual, rather than bi-annual, sessions.

The Group unanimously expressed the intention not to entertain proposals for methods of voting involving a system of votes by "colleges" or categories of States or any other systems which tended to give some States or groups of States weighted votes.

Article 27 of Part I

The Group expressed its preference for the system of composition of the Council already agreed by the Group and according to which, in respect of the developing countries, the special interests to be represented shall include those of States which are exporters of land-based minerals which may also be produced from the resources of the area, as well as those of States with large populations, States which are land-locked or geographically disadvantaged, States which are major importers of land-based minerals which may also be produced from the Area, and least-developed States.

The Group agreed too on the advisability of adding to article 27 a new paragraph establishing that at each election of members of the council the election of the members representing the special interests shall take place before the election of the remaining members.

Finally, the Group favoured a voting system according to which decisions on important questions would be made by a two-thirds majority instead of a two-thirds plus one majority required in the Negotiating Text.

Provisions of Part I and Annex I not expressly mentioned in this Report, were not examined by the Group.

TURKISH VIEWS ON THE INFORMAL SINGLE NEGOTIATING TEXT PART II

1. General:

The Delegation of Turkey concurs with the view that an informal single text which would serve as a basis for negotiation would largely enhance an early and successful conclusion of the Conference.

However, in view of fundamental differences on a great number of issues which exist at the present stage of the work of the Conference, the insurmountable difficulties of preparing a single text which will enjoy a general acceptance as a negotiating basis are self evident. Under these circumstances, the texts that have been prepared could serve as a useful device only if a very flexible attitude is adopted towards them without trying to impose any official status more than informal papers reflecting personal views of the Chairmen.

Another question is the status of other very useful texts such as main trends document vis a vis the informal single negotiating text. In the opinion of the Turkish Delegation, it flows from the very nature of the informal single negotiating text that the preceding documents remain to be valid and should also be taken into consideration as a working basis together with the informal single negotiating text. The Delegations should be free to make use of all the documents submitted to the Conference to reach an agreement.

It is also important that the right of the delegations to submit amendments to the informal single negotiating text or new proposals should not be affected. These amendments or proposals should be distributed by the Conference Secretariat as Conference Working Papers.

2. Article 2. Breadth of Territorial Sea:

Delegation of Turkey fully understands the need to establish a maximum limit to the territorial sea, which 1958 and 1960 Conferences failed to do and put an end to the chaotic state of affairs. The maximum limit envisaged on Article 2 of the Informal single negotiating text for the breadth of the territorial sea is 12 nautical miles and it enjoys a considerable support in the Conference.

The Delegation of Turkey is of the opinion that while 12 nautical mile maximum limit can be justified for coastal states bordering the Oceans, unilateral and absolute exercise of this right, may have adverse effects on the rights and interests of the States bordering narrow seas and create new problems and conflicts in the region. In such cases, an extension by a State of its territorial sea should be valid only if consented to or acquiesced by other riparian States concerned.

The acceptance of 12 nautical mile as maximum breadth of territorial sea does not ipso jure transform the waters upto that limit into territorial waters, but merely gives the coastal State the right to extend the limits of its territorial sea upto the maximum limit.

In order to gain universal acceptance for the Convention it is important to make a special provision in the Convention that would indicate that this right shall be exercised with regard to the rights and interests of other states in the region.

Such a provision is in line with the general principle of law that no right is absolute, but that every right has to be exercised with regard to the competing rights of others.

In fact, this basic principle of law is amply reflected in Article 4, paragraph 5 of

1958 Convention on Territorial Sea and Contiguous Zone which reads as follows:

> "The system of straight baselines may not be applied by a State in such a manner as to cut off from the high seas the territorial sea of another State."

This line of thinking should also be introduced in Article 2 for the maximum breadth of territorial sea.

5. Article 62. Definition of Continental Shelf:

It would not be too presumptuous to say that there is, by and large, a consensus in the Conference that, in view of the technological developments, depth and exploitability criteria of 1958 Continental Shelf Convention are no longer regarded valid for the definition of the Continental Shelf.

The International Court of Justice has, by adopting the "natural prolongation" concept, shed considerable light in clarifying the continental shelf concept.

The International Court of Justice in 1969 North Sea Continental Shelf case has explicitly given predominance to the geological factors over distance criteria, by repeatedly defining the continental shelf as the continuation of the land territory under the sea.

In paragraph 19 of the said decision the Court stated that: "... the rights of the coastal state in respect of the area of continental shelf that constitutes a natural prolongation of its land territory into and under the sea exist ipso facto and ab initio by virtue of its sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources."

In paragrapn 45 of the same judgement the Court states:

> "What confers the ipso jure title which international law attributes to the coastal State in respect of its continental shelf, is the fact that the submarine areas concerned may be deemed to be actually part of the territory over which the coastal State already has dominion, - in the sense that, although covered with water, they are a prolongation or continuation of that territory, an extension of it under the sea."

Distance criterion upto 200 nautical miles could also be made use of as a supplementary criterion for those states with narrow shelves.

From the preceding paragraphs, it can be concluded that the Delegation of Turkey shares the definition contained in Article 62.

However, it is necessary to elucidate and complement the geological concept of continental shelf by giving a definition for the continental margin. With this view, Turkey closely followed the inter-sessional work done on this subject by some informal working groups.

In this connection, the Delegation of Turkey would like to emphasize that continental shelf as a physical and geological concept exists by definition both before 200 miles and beyond it, according to the extension of the natural prolongation. It is not a concept only for the coastal states which border the oceans and possess broad shelves, but also constitutes the source of sovereign rights of the states in narrow seas. Therefore, it is not realistic to confine the definition of the continental margin to that portion of the shelf beyond 200 nautical miles.

4. Articles 61 and 70. Delimitation of the Exclusive Economic Zone and the Continental Shelf:

Both in the States' practice and in the international law, it is widely accepted that delimitation between adjacent and opposite states should be effected by agreement between the parties in accordance with equitable principles.

In 1969 judgement of the International Court of Justice it is concluded that the median line method is not a rule of international law, but one of the methods that can be employed and that the median line method does not yield equitable results in every case.

These views are also reflected to a certain extent in Articles 61 and 70 of the Informal Single Negotiating Text. However, one major drawback of these two articles is the automatic application of median line or the equidistance method until an agreement is reached. Median line as an interim regime might cause serious difficulties for the parties involved to find a negotiated settlement since it might encourage both parties or one of them to initiate exploration and exploitation activities in the disputed area, thus prejudging the final outcome of the negotiations. Furthermore, the party which favours median line will be reluctant to conduct meaningful negotiations, since as long as the negotiations remain unconcluded, the regime in force would be the median line or equidistance.

Thus, the main principle of effecting the delimitation by agreement in accordance with equitable principles, will in fact, be rendered meaningless if median line, as an interim solution, is accepted.

It might also be asked whether it will not be more appropriate to leave to the discretion of the

dispute settlement mechanism mentioned in paragraph 2, to decide for an interim measure which it deems best, taking into consideration the requirements of each individual case.

5. Article 132. Regime of Islands:

One of the major shortcomings of the 1958 Conventions was their failure to come to grasp with the question of islands. It is imperative to remedy this shortcoming in the future Convention, especially in view of the fact that the new Convention will attribute vast ocean spaces to the coastal states.

Turkish views on this subject are well known and need not be repeated here. However, it is unfortunate that in Article 132 of the Informal Single Negotiating Text, no attempt is made to deal with the problems which will face the international community as the consequence of the future Convention.

Furthermore, the way Article 132 is drafted does not even deal with the specific problems islands present within the context of delimitation. If Article 132 is taken into consideration together with Articles 61 and 70 concerning the delimitation of economic zone and continental shelf, it may be concluded that effects of the islands on the delimitation will not be taken into account in negotiations inspite of any inequitable results they might create. This is a major defect which needs to be remedied.

6. Articles 133-135. Enclosed and Semi-enclosed Seas:

There are two aspects of the question of enclosed and semi-enclosed seas: The first is that many new provisions that might be adopted in the

future Convention, will jeopardize the interests of those countries bordering enclosed and semi-enclosed seas, and create adverse effects for them.

The second aspect is that geographical characteristics of enclosed and semi-enclosed seas necessitate a close co-operation among the countries in those seas.

Thus, it is necessary for the future Convention to embody articles which will safeguard rights and interests of the States in the enclosed and semi-enclosed seas and at the same time maintain an effective co-operation among them.

A separate regime for enclosed and semi-enclosed seas is an important device to strike a balance between the interests of oceanic coastal states and states bordering narrow seas, in order to improve the chances of a successful outcome of the Conference.

Regarding the related articles in the informal Single Negotiating Text, article 133, which is a definition article, might serve as a useful basis to improve upon.

Article 134, confines itself to the question of co-operation in enclosed and semi-enclosed seas, but does not deal with the application of the provisions of the Convention in accordance with the special requirements of the enclosed and semi-enclosed seas.

It will also be preferable to have certain flexibility in Article 134 by not preparing an exhaustive list for the areas of co-operation.

Article 135 which was never a subject of discussion or a proposal, constitutes a major drawback for the endeavours to strike a balance

between the interests of States bordering enclosed and semi-enclosed seas and oceanic coastal states. The main purpose of including special provisions for enclosed and semi-enclosed seas is to harmonize the application of some general provisions of the future Convention with the special requirements of the enclosed and semi-enclosed seas. Without such a harmonizing article, an absolute application of all the general provisions of the Convention in the enclosed and semi-enclosed seas will inevitably lead to inequitable results and will cause new conflicts. Article 135, on the contrary, subjects the implementation of the provision of this chapter, to the condition of their being consistent with the general provisions. In other words, Article 135 reverses the natural sequence and distorts the basic aim of these provisions. With this provision remaining, it may even be asked whether it is worth including a special chapter in the convention for the enclosed and semi-enclosed seas.

TOPICS FOR DISCUSSION SUGGESTED BY MEMBER GOVERNMENTS

1. BANGLADESH:

Delineation of Baseline.

2. JAPAN:

Continental Shelf and subject allocated to Committee I (Sea-bed and Ocean Floor, the sub-soil thereof beyond the limits of national jurisdiction).

3. REPUBLIC OF KOREA:

(1) The Territorial Sea and the Contiguous Zone;

(2) The Exclusive Economic Zone and fishery problems;

(3) Continental Shelf; and

(4) Archipelagos and regime of islands.

4. SRI LANKA:

(1) Discussion may be concentrated on Committee I problems, as these problems appear to be critical at this stage.

(2) Only the most important issues before Committee I should be dealt with. It is believed that the following constitutes the most important issues before Committee I.

(A) Whether and if so, on what basis should access to the sea-bed for the purpose of exploration and exploitation be controlled;

(B) Whether and if so, on what basis and by what institutional arrangements should the production of minerals from sea bed sources be controlled. What are the interests sought to be protected by such arrangements? Should production

control be effected through the control of access by the authority?

(C) The functions of the organs of the authority and the suggestion that each such organ should have exclusive and separate competences.

(D) The composition of the organs of the authority.

5. TANZANIA:

(1) Territorial Sea;
(2) Exclusive Economic Zone;
(3) Rights of landlocked States; and
(4) Straits used for International Navigation.

6. THAILAND:

(1) Exclusive Economic Zone;
(2) Continental Shelf;
(3) Archipelago;
(4) Delimitation of Marine Spaces; and
(5) Regime of Islands.

7. TURKEY:

(1) Breadth of the Territorial Sea;
(2) Continental Shelf;
(3) Delimitation of Continental Shelf between adjacent and opposite States;
(4) Delimitation of outer margin of Continental Shelf;
(5) Regime of the islands; and
(6) Enclosed and Semi-enclosed seas.

BANGLADESH POSITION ON THE
QUESTION OF BASELINE

There is an increasing awareness in the international community that the present law of the sea, as it exists today, is inadequate to meet the legitimate interests of all countries. The unprecedented advances in science and technology and the emergence into sovereign independence of over sixty states in the past decade have clearly underscored the need for revision. There is growing recognition that the laws should protect, in particular, the interests of developing countries who, as a result of colonial subjugation and numerous past injustices were unable to have their interests reflected or safeguarded by the old traditional laws. The Third United Nations Conference on the Law of the Sea, is, therefore, entrused with the task of revising and safeguarding the legitimate interests of all countries and particularly developing countries.

2. One of the issues of crucial interest to Bangladesh and which is indeed a fundamental starting point in the delimitation of the various zones of maritime jurisdiction of any State relates to the delineation of baselines. A close look at any map of our region clearly illustrates the peculiar characteristics of our coastline which is among the most heavily indented in the world.

3. Article 4 of the 1958 Geneva Convention on the Territorial Sea takes into account, among other things, the geographical configuration of the coast of states in determining baselines. We are all aware of the history and background leading to the formulation of this article. The World Court in the Anglo-Norwegian Fisheries Case of 1951 observed that :-

> "A State must be able to determine the latitude necessary in order to be able to adapt its delimitation to practical needs and local requirements."

4. It is our submission that the motive spirit underlying Article 4 is the need to take into account the

peculiarities of the coasts of littoral states in the matter of employing baselines. The essence of the provisions of Article 4 is that it is geography which will dictate the legal solution. Law cannot be divested from the facts of life and ought to be suited to local requirements. The UN Conference is to formulate a legal framework which will be durable, practical and equitable and which will indeed be universal in that it ensures the interests of all countries. If the formulation ignores these basic attributes there is a great danger that it will give impetus to unilateral action and open the door to chaos and conflict.

5. It was motivated by these considerations and the spirit underlying Article 4, that the leader of the Bangladesh delegation and the former Foreign Minister of Bangladesh, H.E. Mr. Justice Abu Sayeed Chowdhury, stated at the Plenary Seas on the Caracas Conference on 3rd July, 1974 that owing to the geo-morphological peculiarities of her coast Bangladesh favours a variation of the straight baseline on the depth method to suit its local requirements. Bangladesh takes the position that the regime of the straight baseline recognised by the 1958 Convention takes into account the diversity of facts and geographical and geological peculiarities of the coasts of littoral states and, therefore, implicitly permits the employment of baselines on the depth-method.

6. The specific considerations and basic interest that led Bangladesh to favour the depth-method of our baseline are detailed below. In this regard attention is drawn to the map of Bangladesh.

7. Almost the entire area of Bangladesh constitutes one integrated drainage basin involving a plain tract and a flood-plain which is the confluence of two mighty rivers - the Ganges and Brahmaputra. These two rivers meet and flow in meandering and braided channels into the Bay of Bangal. The combined delta of these two rivers and their numerous tributaries is larger than that formed by the Nile and is in fact the most spectacular and widest coastal plain in the planet. Geo-physical

Natures play a major role in the evolution and behaviour of the coastal regions of Bangladesh which, through the ages, has been affected and dominated by the impact of nature on its regional hydrology. The dynamics of the rivers of Bangladesh are even more complicated because of the marked influence of the sea. The combined discharge of the Ganges and Brahmaputra system totally alters the flow of the current and the level and surface density of the Bay of Bengal. The rivers of Bangladesh carry down to the Bay a colossal discharge of 2 billion tons of silt a year and the combined flow of the river system is about 5 million cubic ft. per second. There is, in fact, no other sea in the world which is so wholly under the domination of its tributary rivers. The sea-level during the monsoon period rises by 4 feet at Chittagong, a world record. Through the mouth of this riverine system flows waters swollen by the world's heaviest rainfall. The shores of Bangladesh have consequently experienced the massive impact of several natural phenomenon. The cumulative effects of river flood, monsoon rainfall, cyclonic storms and tidal surges have contributed to a continuous process of erosion and shoaling. The results of all the above-mentioned factors have been monumental on Bangladesh's coast. It has the following characteristics :-

(a) A highly shifting and unstable baseline. As a result of the continuous process of alluvium siltation and sedimentation, the submarine areas off the coast are being built up. Mud-banks and low-tide elevations appear and disappear over relatively short periods of time. The coastline is, therefore, constantly fluctuating.

(b) In terms of channel stability the situation is even more precarious. It is a known fact to most hydrographers and navigators concerned with the Bay of Bengal that off-

shore waters of Bangladesh are among the most hazardous to navigate due to the shallowness of the waters and the shifting navigational channels. It is indeed a fact that no mechanised vessel can traverse the waters in a course parallel to the coast. Thus if a ship wanted to proceed within Bangladesh from Chittagong on the east coast to Khulna on the west coast of Bangladesh, it could not do so without preceeding due south from Chittagong on the open sea - then west across the Bay of Bengal and then north to reach Khulna.

8. An extremely important and remarkable feature for Bangladesh is that the huge amount of silt carried by its rivers into the Bay of Bengal has made it possible for Bangladesh ultimately to dyke and drain an area which is equal in size to almost two-thirds of Bangladesh. This is the Bangladesh estuarine fan adjoining our coast. This is where nature is patiently laying layer upon layer of sedimentation - the foundation of the extension of the Bangladesh delta. Satellites surveying this area have confirmed the possibility of this fact in the very near future. For a country with 75 million people on 55,000 squaremiles of land the development of this area will constitute not only a necessity but an imperative.

9. To sum up, Bangladesh coastal waters have the following characteristics :-

(1) The estuary of Bangladesh is such that no stable water line or the demarcation of landword and seaword area exists.

(2) The continual process of alluvion and sedimentation forms mud-banks and the area is so shallow as to be non-navigable by other than small boats.

(5) The navigable channels of land through the aforesaid banks are continously changing their courses and require soundings and demarcation so that they pertain to the character of the river mouths and inland waters.

10. These basic geo-morphological peculiarities seek to justify the depth-method baseline from which the territorial waters is to be measured is expressed by means of straight line linking geographical co-ordinates which lay on certain depth of coastal waters.

11. As it was submitted earlier that Article 4 implicitly recognises this method of baseline. What Bangladesh delegation desires is that in the future Convention, this article may be made more explicit and a formulation may be introduced to give expression to this idea. At Caracas Bangladesh introduced a formulation which reads as follows :-

> "In localities where no stable low-water line exists along the coast due to continual process of alluvion and sedimentation and where the seas adjacent to the coast are so shallow asto be non-navigable by other than small boats and pertain to the character of inland waters, baselines shall be drawn linking appropriate points on the sea adjacent to the coast not exceeding 10 fathom line."

12. After careful consideration, however, and taking account both of the need to reach one agreed text as also the fact that our previous formulation is not an innovation of Article 4, Bangladesh submitted the following formulation at a Sub.Committee meeting in Geneva in April 1975 :-

> "The localities where the coast line is deeply indented and cut into or if there is a fringe of Island along the coast in its immediate vicinity or if the water adjacent to the coast

is marked by continual process of alluvion and sedimentation creating a highly unstable low water line the method of the straight baseline joining appropriate points on the coasts or on the coastal waters may be employed in drawing the baseline from which the breadth of territorial sea is measured."

13. This is a proposal which Bangladesh delegation thought might meet the requirements of the coasts of littoral states like Bangladesh. The formulation can be improved upon by the Drafting Committee.

14. Bangladesh is grateful to the Chairman of the Second Committee for attempting to meet our legitimate interests as reflected in Article 6, para. I of Part II of the Single Negotiating Text prepared during the Geneva Session of the Conference in May, 1975. The text on the question of baseline does not meet the demands of our situation. Bangladesh is fully aware of the dangers of arbitrary action which militate against the general international interests and this is precisely why Bangladesh has placed its case for consideration before the international community. Bangladesh belidves that the question of baseline should be discussed more thoroughly in the next round of negotiation in New York before successful formulations are spelt out in this matter and all the relevant factors should be considered and taken care of.

15. Bangladesh proposal is not only justified by the peculiar and unique circumstances of the coast but also by juridical factors implicit in the evolution of international law in this field which is described in the following paragraphs.

16. In 1951 when the International Court of Justice laid down its judgement relating to Baseline in the Anglo-Norwegian Fisheries Case, certain vital considerations and guiding criteria were outlined by the Court and these were incorporated in the 1958 Geneva Convention. Of particular relevance were the following:-

(1) The close dependence of the territorial sea upon the land domain. It is the land which confers upon the coastal state a right to the waters of its coast. It followed, therefore, that while such a state must be allowed the latitude necessary in order to be able to adapt its delimitation to practical needs and local requirements - the drawing of baselines must not depart to any appreciable extent from the general direction of the coast.

(2) A fundamental consideration of particular importance, the Court held, was the more or less close relationship existing between certain sea areas and the land formations which divide or surround them. The real question raised in the choice of baselines is in effect whether certain sea areas lying within these lines are sufficiently closely linked to the land domain to be subject to the regime of internal waters.

(3) Finally the Court established one other consideration - the scope of which extended beyond purely geographical factors viz: the existence of certain economic interests peculiar to a region, the reality of which was closely evidenced by long usage.

17. A close analysis of the Judgement of the Court establishes certain other factors of particular importance.

First: The Court throughout underscored one major precept - namely - that any solution was to be dictated by geographic realities and that the coastal state would seem to be in the best position to appraise the local conditions dictating the solution of its baselines.

Second: The Court to some extent recognised the Norwegian contention that rules of international law ought to take into account the diversity of facts and therefore, concede that the drawing of baselines must be adapted to

The special conditions obtaining in different regions - Norway's method of drawing straight baselines was an adaptation rendered necessary by local conditions. The Court, therefore, pointed out that in its opinion all it could see was the application of general international law to a specific use.

18. Thus the Court also conceded partly to Norway's claim that its case was based on considerations which, inter-alia, related to :-

(a) geographical conditions prevailing on the Norwegian coast;

(b) the safeguard of the vital interests of the inhabitants of the northernmost parts of the country, i.e. the economic factors involved.

19. As is well-known the judgement of the Court was not universally well-received and was indeed subject to severe criticism. The important fact is, however, that only few years later its recommendations were to be adapted by the International Law Commission almost in their entirety and subsequently incorporated into relevant Articles of the 1958 Geneva Conventions. This was indeed a crucial example of the need to adapt and then create law to meet changing circumstances of international life and particularly to reflect positions of certain countries hitherto unrecognised.

20. The past history of the evolution of international law in our opinion has, therefore, underscored certain basic factors crucial to our case:-

Firstly - that having regard to the great variety of geographic and economic conditions prevailing in the world it was not possible to lay down uniform rules - applicable to all states, governing the extent of Territorial Sea and the way in which it is to be reckoned.

Second - that the present Conference has been convened to formulate a new Convention which would take into account the monumental changes that have occurred

in the 17 years since the adoption of the Geneva Conventions. Since 1958, seventy or so countries have emerged into sovereign independence, States whose varied interests could not have possibly been reflected in traditional international law. Moreover, this intervening period has also witnessed among the most dynamic advances in science and technology that have rendered obsolete many of the hitherto, accepted customary norms of international law. In the juridical field also, dramatic new concepts have come into being which are more or less acceptable to the great majority of states in the international community. Thus the twelve mile territorial sea limit and the Exclusive Economic Zone concept cannot be considered as radical innovations of the Law of Nations and which most certainly would have been rejected in 1958.

21. The point is obvious. It is evident that in the absence of principles provided for in the past, a new set of general principles must be devised which must reflect the changes in international life, adapt itself to new conditions and, if necessary, create law to conform to these conditions. Thus the adaptation of this new Law of Nations is necessarily different from the "restatement" advocated by some maritime powers which consisted merely of stating the law as it has been established and applied to the present without being concerned with any changes that it may have recently undergone or which it might undergo in future.

22. It is within the vital perspective of this evolving international law that Bangladesh has sought to justify her proposal. It is, therefore, under the compulsions of both law and fact that Bangladesh has presented the proposal indicated at paragraph 12 ante.

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Legal and Treaties Division, Ministry of Foreign Affairs, Government of Bangladesh.

WORKING GROUP OF THE GROUP OF '77

January 1976

DRAFT AMENDMENTS TO PART I OF THE SINGLE NEGOTIATING TEXT

Article 9

Activities in the Area shall be undertaken in such a manner as to foster the healthy development of the world economy and a balanced growth in international trade, to promote international cooperation for the overall development of all countries, especially of developing countries, and to ensure:

a) orderly and safe development and rational management of the Area and its resources;

b) expanding opportunities in the use thereof;

c) the generation of financial and other benefits, and the equitable sharing of such benefits taking into particular consideration the interests and needs of the developing countries, whether land-locked or coastal;

d) just, stable and remunerative prices for raw materials originating either in land or in the Area, and security of supply of such raw materials, to consumers;

e) the avoidance or the minimization of any adverse effects on the economies of developing countries and on the earnings from the export of minerals and other products originating in their territory which are also derived from the Area; and

f) the preservation and protection of the marine environment.

Article 28 of the Convention (new paragraph)

.....

The Council shall

.....

( ) Decide, upon the proposal of a State Party or on its own initiative, and after taking into consideration the recommendations of the Economic Planning Commission, the opening of part or parts of the Area for exploration and exploitation in accordance with the provisions of this Convention, particularly with articles 9 and 30. The Council shall decline to open any part or parts of the Area when examination of all available data indicates that it is inconsistent with the provisions of this Convention, and in particular with articles 9 and 30.

THE ECONOMIC PLANNING COMMISSION

Article 30

1. Members of the Economic Planning Commission shall have appropriate qualifications and experience relevant to mining and the management of mineral resource activities, and international trade and finance.

2. The Commission shall advise the Council in the exercise of the Council's economic planning functions and make such special studies and reports on these functions as may be required by the Council.

3. The Commission, in consultation with the competent organs of the United Nations, specialised agencies, producers' organisations, consumers' organisations and parties to commodity and/or buffer stock arrangemements, shall review the trends of, and factors affecting supply, demand and prices of raw materials which may be obtained from the Area and, bearing in mind the interests of both consuming and land-based mineral producing countries, and in particular the developing countries among them, make recommendations to the Council on programmes and measures with respect to the implementation of this Convention within the framework of paragraph 2 above. In particular the Commission shall make recommendations regarding the negotiation of, and participation in commodity and/or buffer stock arrangements and submit schedules of the extent of the Area or the volume of its resources which would be made available for exploitation.

4. If a situation referred to in article 9, paragraph e) of this Convention arises, or is likely to arise, the State or States Parties concerned may bring it to the attention of the Commission. The Commission shall forthwith investigate this situation and shall make appropriate recommendations to the Council. In its investigations the Commission may, if it deems necessary, consult with States Parties and with the competent intergovernmental organisations in accordance with paragraph 3 of this article.

Paragraph 3 of the Annex I

3.- The Authority shall encourage the conduct of general survey operations prior to exploration /and to that end shall regularly open for general survey the sea-bed and ocean floor of such oceanic areas as are determined by it to be of interest for this purpose/. Without prejudice to the right of the Authority to carry out general surveys in the Area, these activities may be carried out by any entity which enters into a contract with the Authority and accepts the obligations imposed by paragraph 10 of this Annex.

General survey operations shall not be of an exclusive character. The Authority may award more than one contract for general survey operations in the same area.

3. bis.- The Authority will only open for purposes of exploration and exploitation part or parts of the Area determined by it to be of commercial interest on the basis of sufficient supporting data. Such exploration and exploitation shall be conducted directly by the Authority in accordance with part B and, within the limits it may determine in accordance with paragraph 8(f), through States Parties to this Convention, or State Enterprises, or persons natural or juridical which possess the nationality of such States, or are effectively controlled by them or their nationals, when sponsored by a State Party, by entering into contracts for associated operations in accordance with paragraphs 5 and 6.